

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JERRY WAYNE STALLINGS,

Plaintiff,

V.

CHIEF BRUCE HALL, *et al.*,

Defendants.

Case No. C10-5388RBL/JRC

REPORT AND RECOMMENDATION

NOTED August 6, 2010

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. This matter comes before the court upon plaintiff's request/motion to voluntarily dismiss his complaint (Dkt. # 5). After reviewing plaintiff's motion, the pleadings made in support thereof, and the remaining record, the court recommends the motion be GRANTED and this action be DISMISSED WITHOUT PREJUDICE.

DISCUSSION

A plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Fed R. Civ. P. 41 specifically provides

1 that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion
2 for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

3 Accordingly the court recommends the action be DISMISSED WITHOUT PREJUDICE.

4 In a letter that accompanies the motion plaintiff asks the court to "dismiss" the filing fee
5 as well (Dkt. # 5). Plaintiff is an inmate who was granted in forma pauperis standing. Under the
6 terms of the Prison Litigation Reform Act he must repay the filing fee in installments. The fee
7 must be repaid even if the action is dismissed. 28 §U.S.C. 1915 (b)

8

9 **CONCLUSION**

10 Plaintiff's request to voluntarily dismiss his complaint-- (Dkt. # 5) -- should be
11 **GRANTED**. The filing fee must still be paid. Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R.
12 Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written
13 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
14 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the
15 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
16 August 6, 2010, as noted in the caption.

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18 Dated this 8th day of July, 2010.

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21 J. Richard Creatura
22 United States Magistrate Judge